

CCRB INVESTIGATIVE RECOMMENDATION

Investigator: Abigail Shuster	Team: Squad #15	CCRB Case #: 201504112	<input type="checkbox"/> Force	<input type="checkbox"/> Discourt.	<input type="checkbox"/> U.S.
			<input checked="" type="checkbox"/> Abuse	<input type="checkbox"/> O.L.	<input type="checkbox"/> Injury
Incident Date(s) Wednesday, 05/20/2015 7:40 PM	Location of Incident: § 87(2)(b)	Precinct: 83	18 Mo. SOL 11/20/2016	EO SOL 11/20/2016	
Date/Time CV Reported Fri, 05/22/2015 10:13 AM	CV Reported At: CCRB	How CV Reported: Call Processing System	Date/Time Received at CCRB Fri, 05/22/2015 10:13 AM		

Complainant/Victim	Type	Home Address
§ 87(2)(b)	§ 87(2)(b)	§ 87(2)(b)
§ 87(2)(b)	§ 87(2)(b)	§ 87(2)(b)

Witness(es)	Home Address
§ 87(2)(b)	§ 87(2)(b)

Subject Officer(s)	Shield	TaxID	Command
1. DT3 Dominick Vasaturo	01395	939638	GANG BN
2. DT3 Shawn Nordenschild	4257	928873	GANG BN

Witness Officer(s)	Shield No	Tax No	Cmd Name
1. POM Orlando Sanchez	13382	935691	GANG BN

Officer(s)	Allegation	Investigator Recommendation
A.DT3 Dominick Vasaturo	Abuse: At § 87(2)(b) in Brooklyn, Det. Dominick Vasaturo stopped § 87(2)(b)	§ 87(2)(b)
B.DT3 Dominick Vasaturo	Abuse: At § 87(2)(b) in Brooklyn, Det. Dominick Vasaturo frisked § 87(2)(b)	§ 87(2)(b)
C.DT3 Dominick Vasaturo	Abuse: At § 87(2)(b) in Brooklyn, Det. Dominick Vasaturo searched § 87(2)(b)	§ 87(2)(b)
D.DT3 Dominick Vasaturo	Abuse: At § 87(2)(b) in Brooklyn, Det. Dominick Vasaturo searched § 87(2)(b)'s property.	§ 87(2)(b)
E.DT3 Shawn Nordenschild	Abuse: At § 87(2)(b) in Brooklyn, Det. Shawn Nordenschild stopped an individual.	§ 87(2)(b)
F.DT3 Shawn Nordenschild	Abuse: At § 87(2)(b) Det. Shawn Nordenschild frisked an individual.	§ 87(2)(b)
G.DT3 Shawn Nordenschild	Abuse: At § 87(2)(b) in Brooklyn, Det. Shawn Nordenschild searched an individual.	§ 87(2)(b)
H.DT3 Dominick Vasaturo	Abuse: At the 81st Precinct stationhouse, Det. Dominick Vasaturo arrested § 87(2)(b)	§ 87(2)(b)

Case Summary

On May 20, 2015, at approximately 7:40pm, § 87(2)(b) and two unidentified males were in front of § 87(2)(b) when Det. Dominick Vasaturo, Det. Shawn Nordenschild, and PO Orlando Sanchez, of Gang Squad Brooklyn North pulled up in their vehicle. Det. Vasaturo allegedly stopped, frisked, and searched § 87(2)(b) (**Allegations A-C**), then walked him toward the police vehicle, where he frisked him again before handcuffing him and placing him inside. Det. Vasaturo also allegedly searched § 87(2)(b)'s backpack, which was on scene (**Allegation D**).

Det. Nordenschild allegedly stopped, frisked, and searched one of the unidentified males (**Allegations E-G**). § 87(2)(b) and § 87(2)(b) were both taken to the 81st Precinct stationhouse. § 87(2)(b) was released at 9:20pm on a Desk Appearance Ticket (DAT), and § 87(2)(b) was allegedly detained there until that same time (**Allegation H**). § 87(2)(b) was not issued a Criminal Court summons, DAT, or charged with any crime.

Mediation, Criminal and Civil Histories

- Mediation was offered to § 87(2)(b) the only civilian to provide a sworn statement, and he rejected it § 87(2)(b).
- The results of a FOIL request performed on August 13, 2015, indicated that no notices of claim were filed in regard to this incident (BR 13).
- Because § 87(2)(b) was not arrested during this incident, a New York State OCA database search could not be conducted.

Civilian and Officer CCRB Histories

- This is § 87(2)(b)'s first CCRB complaint (BR 1).
- Det. Vasaturo, during his ten-year tenure with the NYPD, has been the subject of twelve prior CCRB allegations involving five cases. Although none of the twelve allegations were substantiated, half of them were truncated without a full investigation and these included search of person, search of vehicle, and frisk allegations, which are categorized as Abuses of Authority. § 87(2)(g)
- Det. Nordenschild has been the subject of one previous CCRB allegation involving one case, which was closed as complainant uncooperative. § 87(2)(b)

Findings and Recommendations

Allegation Not Pled

- **Abuse of Authority - Strip search:** During his unverified telephone statement, § 87(2)(b) alleged that he and § 87(2)(b) were both strip-searched at the 81st Precinct stationhouse. Because § 87(2)(b) did not provide a sworn statement, details regarding this allegation were never obtained. § 87(2)(b) did not report that strip-searches occurred during any of his statements; a telephone statement was obtained from him on June 16, 2015 (subsequent to his sworn statement), at which time § 87(2)(b) affirmed that nothing aside from waiting had occurred at the stationhouse (BR 12). § 87(2)(g)

Explanation of Subject Officer Identification

§ 87(2)(b) stated that a white male officer in his 30s or 40s, who was neither the officer to apprehend him nor the officer to apprehend § 87(2)(b) interacted with his friend “§ 87(2)(b)

§ 87(2)(g)

Allegation A – Abuse of Authority – At § 87(2)(b) in Brooklyn, Det. Dominick Vasaturo stopped § 87(2)(b)

Allegation B – Abuse of Authority – At § 87(2)(b) in Brooklyn, Det. Dominick Vasaturo frisked § 87(2)(b)

Allegation C – Abuse of Authority – At § 87(2)(b) in Brooklyn, Det. Dominick Vasaturo searched § 87(2)(b)

It is undisputed that Det. Vasaturo stopped and frisked § 87(2)(b) § 87(2)(b) reported these allegations, § 87(2)(b) (who stood nearby) corroborated them, and Det. Vasaturo acknowledged having performed them (BR 2, BR 3, BR 4). Whether the stop and frisk of § 87(2)(b) was proper, and whether § 87(2)(b) was additionally searched, are the points that remain in dispute.

§ 87(2)(b) testified that he was waiting for his friend, who lives at § 87(2)(b), as the pair had plans to go to the gym. During the time that he was waiting, § 87(2)(b) acknowledged that § 87(2)(b) and their friend “§ 87(2)(b) had been passing a marijuana cigarette between them. § 87(2)(b) denied having at any point smoked marijuana or held the cigarette at any point (BR 2).

§ 87(2)(b) alleged that Det. Vasaturo approached him and immediately frisked and searched his pockets without having had any kind of conversation. During this time, § 87(2)(b) s hands were by his sides and he was verbally, but not physically, objecting to the frisk and search. Det. Vasaturo then led him to the police vehicle, where he frisked him a second time before placing him inside (BR 2).

§ 87(2)(b) who provided only an unverified telephone statement, testified that Det. Vasaturo had frisked and searched § 87(2)(b) While Det. Vasaturo placed his hand over the front of § 87(2)(b) s groin area during the frisk, § 87(2)(b) pushed Det. Vasaturo’s hand away, saying, “What are you touching me down there for?” At this point, Det. Vasaturo walked § 87(2)(b) over to the police vehicle, where he searched him again in some manner (BR 3).

Det. Vasaturo testified that, as he drove past § 87(2)(b) with his windows down, he detected the odor of marijuana emanating from the location and observed § 87(2)(b) smoking a marijuana cigar. § 87(2)(b) who was standing next to him, was never in possession of the marijuana cigar, and he stated that no other individuals were present aside from § 87(2)(b) and § 87(2)(b) (BR 4).

Det. Vasaturo approached § 87(2)(b) and asked him whether he had been smoking marijuana, to which § 87(2)(b) replied that he had not. Det. Vasaturo did not detect any odor coming from § 87(2)(b) s person, or notice any physical symptomology consistent with smoking marijuana (both of which he did observe on § 87(2)(b) Det. Vasaturo testified that, at this initial point, § 87(2)(b) was considered stopped because of his proximity to § 87(2)(b) whom he had observed smoking marijuana. He requested identification from § 87(2)(b)

Det. Vasaturo testified that § 87(2)(b) appeared extremely nervous during this conversation, as evidenced by the fact that he was sweating and that he covered up his waist – a gesture that Det. Vasaturo was unable to further describe. Det. Vasaturo did not observe any bulges on him. § 87(2)(b) also bladed his body, which Det. Vasaturo interpreted as an act of defiance. § 87(2)(b) never made an attempt to leave the scene, nor did he do anything else with his body suggestive of being in possession of a weapon. During his CCRB interview, Det. Vasaturo reviewed his Stop, Question, and Frisk report, then noted that in addition to suspecting § 87(2)(b) of smoking marijuana, Det. Vasaturo had also suspected him of burglarizing the house, criminal trespassing (the location's open door was the sole indicator of possible burglary or trespassing), and/or selling marijuana (due to § 87(2)(b)'s proximity to § 87(2)(b) BR 4).

As a result of § 87(2)(b)'s demeanor, Det. Vasaturo attempted to frisk him. As he reached toward § 87(2)(b)'s waistband, § 87(2)(b) swatted his hand away. Det. Vasaturo stated that he therefore led § 87(2)(b) toward the police vehicle and frisked § 87(2)(b) quickly before handcuffing him and placing him into the vehicle. § 87(2)(b) was taken to the stationhouse purely to verify his identity, as he had declined to provide identification on scene.

PO Sanchez and Det. Nordenschild, both of whom were interviewed subsequent to Det. Vasaturo, testified that they had observed both § 87(2)(b) and § 87(2)(b) in engaging in some way with the lit marijuana. Their two accounts, however, were inconsistent; PO Sanchez stated that he observed § 87(2)(b) holding the marijuana cigarette and gesturing as if to pass it to § 87(2)(b) while Det. Nordenschild stated that he observed § 87(2)(b) hold the marijuana and then pass it to § 87(2)(b) (BR 5 and BR 6).

PO Sanchez, who was standing nearby after having apprehended § 87(2)(b) without incident, heard § 87(2)(b) refuse to tell Det. Vasaturo his name and address. He also observed § 87(2)(b) blading his body, which made PO Sanchez suspect that § 87(2)(b) may have had a warrant for a violent crime.” He corroborated Det. Vasaturo and § 87(2)(b)'s account of § 87(2)(b) swatting Det. Vasaturo's hand away during the frisk. PO Sanchez stated that Det. Vasaturo did ultimately complete the frisk, but was uncertain where or when this occurred and did not recall whether § 87(2)(b)'s pockets were also searched (BR 5).

Aside from hearing § 87(2)(b) refuse to provide identification, Det. Nordenschild was unable to describe § 87(2)(b)'s demeanor or interaction with Det. Vasaturo. He stated that Det. Vasaturo frisked and searched § 87(2)(b) only after § 87(2)(b) was already handcuffed, and these occurred next to the police van; Det. Nordenschild did not observe Det. Vasaturo frisk or search § 87(2)(b) prior to handcuffing him, or prior to when he did so in front of the vehicle. (BR 6).

§ 87(2)(g)

A person may not be forcibly stopped merely because he or she is seen in the company of another whom the police have probable cause to arrest. People v. McLoyd, 946 N.Y.S. 2d 829 (2012 – Sup.Ct. NY Cty)(BR 11). Nervousness during a police stop does not give rise to founded suspicion that criminality is afoot, much less reasonable suspicion to believe that a person has committed a crime. People v. Garcia, 20 N.Y.3d 317 (2012) (BR 10). A frisk is justified where an

officer reasonably suspects that an individual is armed. People v. DeBour, 40 N.Y.2d 210 (1976) (BR 9).

§ 87(2)(g)

Allegation D – Abuse of Authority – At § 87(2)(b) t in Brooklyn, Det. Dominick Vasaturo searched § 87(2)(b) s property.

§ 87(2)(b) alleged that, while he was seated in the police vehicle, he observed Det. Vasaturo pick up his black backpack and search through its contents. The bag was not taken into custody, and § 87(2)(b) later retrieved it from a friend who had taken it from the scene (BR 2).

Det. Vasaturo denied having searched through a bag, or having observed any other officer do so. Det. Nordenschild and PO Sanchez also denied having searched any bags on scene, and neither of them observed Det. Vasaturo do so. (BR 4, BR 5, BR 6).

During his unverified telephone statement, § 87(2)(b) did not report having witnessed any property being searched on scene (BR 3).

§ 87(2)(g)

Allegation E – Abuse of Authority – At § 87(2)(b) in Brooklyn, Det. Shawn Nordenschild stopped § 87(2)(b)

Allegation F – Abuse of Authority – At § 87(2)(b) in Brooklyn, Det. SDhawn Nordenschild frisked § 87(2)(b)

Allegation G – Abuse of Authority – At § 87(2)(b) in Brooklyn, Det. Shawn Nordenschild searched § 87(2)(b)

§ 87(2)(b) alleged during his telephone statement that Det. Nordenschild frisked and searched one of the unidentified individuals on scene. § 87(2)(b) knew this individual as “§ 87(2)(b)” and stated that Det. Vasaturo searched his sweater and jean pockets after frisking him. This individual was not summonsed or taken into police custody, and § 87(2)(b) did not know § 87(2)(b) real name or any of his contact information (BR 3).

§ 87(2)(b)

Allegation H – Abuse of Authority – At the 81st Precinct stationhouse, Det. Dominick Vasaturo arrested § 87(2)(b)

§ 87(2)(b) alleged that, although Det. Vasaturo informed him that he was being taken to the stationhouse purely to verify his identity and that he would be released within minutes, he was held at the stationhouse for one or two hours. Both he and § 87(2)(b) were placed in a holding cell. § 87(2)(b) had no interaction with any officers during his time waiting in the holding cell. § 87(2)(b) was released at the same time as § 87(2)(b) to whom Det. Vasaturo handed a Desk Appearance Ticket (BR 2).

§ 87(2)(b) in his unverified telephone statement, stated that he and § 87(2)(b) were released from the stationhouse simultaneously (BR 3).

The command log indicates that § 87(2)(b) was released on a Desk Appearance Ticket and that a Stop, Question, and Frisk report was created for § 87(2)(b). It notes that both individuals were released at 9:20pm. Since all three of the officers’ memo books noted that the initial stop at § 87(2)(b) occurred at 7:40pm, and the memo books note that they returned to the command between 7:45pm and 7:50pm, the police documents corroborate § 87(2)(b)’s account that he was held in the stationhouse cell for between one and two hours (BR 7, BR 8).

During his CCRB interview, Det. Vasaturo vacillated with respect to this allegation. He initially stated that § 87(2)(b) was released earlier than § 87(2)(b) but had chosen to stay and wait for him, but Det. Vasaturo was unable to approximate how much earlier § 87(2)(b) was technically released than was § 87(2)(b). Det. Vasaturo then stated that the pair was released simultaneously

Reviewer: _____
Title/Signature Print Date